# COMPLAINT INVESTIGATION CLARK COUNTY SCHOOL DISTRICT (#CL120209)

## INTRODUCTION

On 12/02/09, the Nevada Superintendent of Public Instruction received a complaint dated 12/1/09 from a parent alleging violations in the special education program of a student with disabilities attending Clark County School District (CCSD). An investigation team was appointed to examine the allegation that the CCSD conducted assessments and made observations of the student without obtaining written parental consent after the student was enrolled at the current school in November 2009.

Subsequent to the filing of the complaint, the parent raised an allegation that CCSD also conducted an assessment of the student at the previous school in the spring of 2009 without parental consent. The investigation team informed the parent that the United States Department of Education's discussion of IDEA regulations on the amendment of a complaint states "if the additional information a parent submits is on the same or related incident, it would be part of the amended complaint. If the information submitted...is on a different or unrelated incident, generally, the new information would be treated as a separate complaint." (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46603). The investigation team further stated that it had been determined that the allegation concerning the assessment at the previous school was not "on the same or related incident" as the original complaint and therefore was not under the jurisdiction of this complaint investigation. The parent was informed that she had the option to file another complaint for concerns related to the evaluation at the previous school.

## **COMPLAINT ISSUES**

The allegations articulated in the complaint, and further clarified by a review of documents and input from the parent and CCSD, raised the following issue under the jurisdiction of the NDE:

Issue 1: Whether CCSD complied with federal and state requirements to obtain informed parental consent prior to conducting the Developmental Reading Assessment (DRA) and observation of the student at the current school.

# PERSONS PROVIDING INFORMATION

The investigation team reviewed information from the following people:

- Parent
- Principal
- General education teacher
- Special education facilitator
- Previous school principal
- Previous general education teacher

# **DOCUMENTS REVIEWED**

The documents reviewed by the investigation team included the following:

- 1. 4/30/09 IEP
- 2. Parent emails dated 11/18/09, 11/30/09 12/02/09, 1/6/10 and 1/12/10
- 3. CCSD emails dated 11/17/09 and 12/03/09
- 4. External IEP facilitator email dated 10/29/09

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- U.S. Department of Education, Office of Special Education Programs (OSEP) Policy Letter, 51 IDELR 193, Letter to Sarzynki, May 6, 2008

## **FINDINGS OF FACT**

This investigation involved a third grade elementary school student with autism. A review of documents, as well as information collected from the parent, the principal, the previous principal, the general education teacher, the special education facilitator and the previous general education teacher revealed the following facts.

The student began attending the current school on 11/9/09. Prior to attending the current school, the student attended a previous CCSD school (previous school) during the 2008/2009 school year. The 2008/2009 school year ended in June of 2009. The student did not attend school in the CCSD during the 2009/2010 school year prior to his enrollment in the current school.

The student had a 4/30/09 annual individualized educational program (IEP) in place when he began attending the current school. The IEP was developed at the previous school. That IEP included the results of the Developmental Reading Assessment (DRA) in the present levels of academic achievement and functional performance (present levels of performance). An IEP meeting was scheduled for 1/7/10 to revise the student's IEP.

The principal, the previous school principal, the special education facilitator, the general education teacher and the previous general education teacher (collectively referred to as CCSD staff) reported that CCSD, in preparation for the 1/07/10 IEP and the development of the present levels of performance, wanted to determine if the student's skills in reading had changed in a way that might result in a need to change the programming in the student's IEP. The CCSD staff believed the most reliable way to measure whether the student's reading needs had changed would be to compare the results of the previous administration of the DRA with the new results.

On 11/30/09, the previous general education teacher came to the current school in order to administer the DRA to the student. The previous general education teacher was present at the current school on 11/30/09 only, and specifically for the purpose of conducting the DRA with the student. The general education teacher and the previous general education teacher reported that the previous general education teacher did not conduct an observation of the student in the classroom. The parent was not present in the classroom on 11/30/09. There was no written report presented by the parent or CCSD that documented that the previous general education teacher had made an observation of the student on 11/30/09.

The general education teacher reported that she did not use the results of the DRA to assist in the instruction of the student nor was the DRA routinely administered to students in her class. The CCSD staff reported that there was no parental consent for the administration of the DRA. As a point of interest, the results of the DRA showed that the student had not regressed in his reading skills.

# **CONCLUSIONS OF LAW AND REASONS**

Issue 1: Whether CCSD complied with federal and state requirements to obtain informed parental consent prior to conducting the Developmental Reading Assessment (DRA) and observation of the student at the current school.

This complaint concerned an allegation that the district did not obtain written consent prior to the previous teacher administering the DRA to the student and observing him in the classroom in the current school.

Federal regulations at 34 CFR §300.300(c)(i) state that each public agency "must obtain informed parental consent...prior to conducting any reevaluation of a child with a disability."

Federal regulations at 34 CFR §300.15 state that "Evaluation means procedures used in accordance with §§30.304 through 300.11 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs".

OSEP clarified its position with regard to the requirement for a district to obtain parental consent with respect to evaluations when it stated "The fact that a proposed assessment will address the amount and type of a student's IDEA services rather than the student's eligibility does not permit a district to proceed without parental consent. OSEP observed that the parental consent requirement applies to all evaluations that address a specific student's

needs under the IDEA". OSEP stated "...an evaluation to determine whether "services should be increased or decreased" is generally considered an "evaluation" under 34 CFR § 300.15; and therefore, written parental consent is required". (OSEP Letter, 51 IDELR 193, Letter to Sarzynki, May 6, 2008)".

In this case, the DRA was administered to the student on 11/30/09. The purpose of the administration of the DRA was to help determine whether the student's reading needs had changed during his absence from CCSD at the beginning of the 2009/2010 school year, which could have resulted in a need for changes in his special education services. The CCSD did not obtain parental consent prior to the administration of the DRA.

Because the DRA was administered to help determine whether the student needed a change in his special education services, the complaint investigation team determined it fell under the definition of an evaluation and required parental consent as clarified by the OSEP Letter to Sarzynki discussed above.

In this case, although the parent alleged the previous general education teacher made an observation of the student in the classroom without her consent, the complaint investigation team concluded that no such observation was made. This conclusion was based on three facts. First, the parent was not in the classroom on the only day the previous general education teacher was present at the current school and therefore did not have first hand knowledge of any observation of the student on that day. Second, the two teachers who were present and had firsthand knowledge of what occurred in the classroom on that day reported that no observation was made. Thirdly, no written evidence existed to demonstrate that an observation of the student had been made that day. Because there was no observation of the student, there was no obligation to obtain parental consent with respect to an observation.

Therefore, the investigation team concluded that the CCSD did not violate any federal or state requirements to obtain informed parental consent for an observation of the student but did violate federal and state regulations when it administered the DRA to the student without first obtaining parental consent.

# ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective actions to address the violation found in this complaint investigation. Specifically, the district did not request parental consent prior to conducting an assessment.

# Professional Development/Training

Within 30 days of receipt of this report, the CCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must:

- 1. Include a plan to review and revise, as necessary, district policies and procedures with regard to the requirements for obtaining parental consent when conducting an evaluation.
- 2. Provide professional development for teachers and administrators at the school site on the requirements for obtaining parental consent when conducting an evaluation.

The CAP must be approved by the NDE prior to implementation and in any event, no later than 15 school days following the receipt of the proposed CAP. Following the receipt of approval of the proposed CAP, the district must implement the approved CAP and provide documentation of district corrective actions to the NDE no later than April 30, 2010.